IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1198 of 1997
in
MISC.CIVIL APPLICATION No 1842 of 1995
with
CIVIL APPLICATION NO. 8979 OF 1997
in
FIRST APPEAL NO. 1127 OF 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ORIENTAL INSURANCE CO LTD

Versus

BHAL NALKANTHA KHADI

Appearance:
MR RAJNI H MEHTA for Appellant/applicant.
MR AKIL KURESHI for Respondent-claimant

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE M.S.SHAH

Date of decision: 18/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

This Letters Patent Appeal is directed against the judgment and order dated 28th April 1995 of the

learned Single Judge, partly allowing First Appeal No. 1127 of 1987, arising from M.A.C.Case No.232 of 1985 and the order dated 23.6.1997 passed by the learned Single Judge in Misc.Civil Application No. 1842 of 1995 rejecting the said review application.

2. Respondent No.2 herein filed the above numbered Claim Petition before the Motor Accident Claims Tribunal, Ahmedabad for claiming compensation of Rs.1,00,000/- for the injuries sustained by him in the vehicular accident which took place on 8th August 1984 at 3.15 p.m. As the claimant was minor at the relevant point of time, the claim petition was filed through his father.

3. The owner and the Insurance Company contested the claim petition. After considering the evidence on record, the Tribunal rendered its award dated 15th January 1987 awarding compensation of Rs.62,800/- with proportionate costs and interest to the claimant. However, the Tribunal absolved the Insurance Company, i.e. appellant herein, from its liability to answer the award and the liability was fastened on the driver and owner of the offending vehicle. Hence, the award of the Tribunal came to be challenged in First Appeal by the owner. The First Appeal, which came to be accepted by the learned Single Judge by his judgment under Appeal holding that since the Demand Draft for premium for the policy and the proposal form signed by the insured, were given to the authorised agent of the Insurance Company on 7th August 1984 i.e. one day before the date of accident, the Insurance Company was liable to satisfy the award. The application for review of the said order, being Misc.Civil Application No. 1842 of 1995 filed by the Insurance Company came to be rejected by the learned Single Judge vide order dated 23.6.1997 which is also under challenge in this appeal.

4. Mr.Ajay Mehta, learned Counsel appearing for the appellant Insurance Company has submitted that since the Insurance Company received the proposal Form and the premium amount on 13th August 1984 which was after the date of the accident (8th August 1984), the Insurance Company was rightly absolved by the Tribunal from the liability to answer the award. Mr Mehta has heavily relied on the provisions of Sub-section (4) of Section 64-VB of the Insurance Act, 1938 in support of his contention that since the amount was not received by the appellant-Insurance Company within 24 hours of the collection of premium from the insured by the agent of the appellant, the appellant cannot be fastened with the liability to satisfy the award.

5. Mr.Akil Kureshi, learned Counsel appearing for the respondent-claimant, however, points out that the learned Single Judge has given a finding of fact that the owner of the vehicle had given the proposal as well as the premium amount by Demand Draft dated 7th August 1984 to the authorised agent of the Insurance Company on 7th August 1984 itself which was prior to the date of the accident. Hence, the Insurance Company has rightly been held to be liable.

6. Section 64-VB of the Insurance Act, 1938 reads as under :-

"64-VB. No risk to be assumed unless premium is received in advance :

(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation : Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.

(3) Any refund of premium which may become due to an insured on account of cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an

insurer, he shall deposit with, or despatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.

(5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories on insurance policies."

(emphasis supplied)

7. Having gone through the judgment of the learned Single Judge, we are of the view that the finding of fact that the policy proposal and the premium amount in form of demand draft were given before the date of accident, cannot be interfered with in this Letters Patent Appeal. The learned Single Judge has rightly held that the Insurance Company was liable to satisfy the award in respect of the accident which took place after the authorized agent of the Insurance Company received the proposal along with the premium by Demand Draft.

8. As regards the contention based on Sub-section (4) of Section 64-VB of the Insurance Act, the same has been rightly rejected by the learned Single Judge by holding that that is a matter between the insurer and the agent and the insured is not vitally concerned with it. Once the authorized agent accepts the proposal form with advance premium either in cash or by cheque or by a bank draft, he receives that money as the agent of the Insurance Company. So far as the insured is concerned, payment is complete, of course, subject to realization of the negotiable instrument.

9. We are also of the view that the provisions of sub-section (1) of Section 64-VB operate on their own without in any manner being whittled down by the provisions of sub-section (4) thereof. There is nothing in the provisions of Section 64-VB or any other provision to indicate that the provisions of sub-section (4) control the provisions of sub-section (1) of Section 64-VB. On the contrary, the underlined words in sub-sec.(1) indicate otherwise.

The object of sub-section (4) is only to ensure that the agents of the Insurance Company do not create any ante dated liability. Hence, when no such intention is found, the liability of the Insurance Company cannot be defeated by any delay on the part of the agent in forwarding the proposal and the payment beyond 24 hours,

unless it is found that there was any attempt on the part of the agent to create, after the accident, any ante dated liability. Subject to this rider, the provisions of sub-section (4) of Section 64-VB cannot adversely affect the right of the insured or any third party to get the benefit of the insurance available under the provisions of the Motor Vehicles Act or under any other law.

10. As far as the instant case is concerned, in view of the fact that the premium was paid by Demand Draft dated 7th August 1984, there cannot be any scope for controversy as to whether the amount was really paid before the date of accident (8th August, 1984) or thereafter.

11. In view of the aforesaid discussion, we do not find any merit in this Letters Patent Appeal and the same is dismissed.

12. Since the main appeal itself is dismissed, the Civil Application for stay does not survive and is rejected.

(Kshitij R. Vyas, J.)

(M.S. Shah, J.)
Sreeram.